

In the Matter of:

KRS 278.300 prohibits a utility from issuing any security or evidence of indebtedness, or assuming any obligation or liability

in respect to the securities or evidences of indebtedness of any other person until it has been authorized by Commission order to do so.

On July 2, 1993, Big Rivers applied for Commission approval of Amendments to its existing contracts with the City of Henderson, Kentucky ("Henderson") and the City of Henderson Utility Commission. In its application, which was filed in Case No. 93-065,¹ it advised the Commission that the Amendments were necessary to accommodate the installation and operation of SO₂ scrubbers at Henderson's Station Two generating plant. It further advised that the contract between Wheelabrator Air Pollution Control, Inc. and Henderson for construction of the SO₂ scrubbers posed significant penalties for project cancellation or delay. Big Rivers, however, did not reveal whether it had assumed any obligation for such penalties.

Concerned about Big Rivers' potential liability for these financial penalties, the Commission ordered Big Rivers to reveal the extent of its current liability for such penalties. Big Rivers subsequently advised the Commission of its assumption of 82.86 percent of Henderson's total liability for financial penalties associated with the scrubber project. It submitted a letter agreement with Henderson, executed by Big Rivers General Manager Paul A. Schmitz, in which Big Rivers agreed to assume a portion of

¹ Case No. 93-065, City of Henderson, Kentucky, City of Henderson Utility Commission, and Big Rivers Electric Corporation Application for Certificate of Public Convenience and Necessity and to File Plan for Compliance with Clean Air Act and Environmental Surcharge.

the financial penalties. It also provided the minutes of a special meeting of Big Rivers' Board of Director, held January 29, 1993, in which the aforementioned members of Big Rivers' Board of Directors authorized the letter agreement's execution.

At the time Big Rivers applied for approval of the Amendments, this letter agreement obligated Big Rivers to pay approximately \$5.28 million in financial penalties. When Big Rivers revealed this obligation to the Commission, it had grown to approximately \$6.17 million.

Based on a review of the record evidence in Case No. 93-065 and being otherwise sufficiently advised, the Commission finds that a prima facie case has been made that Big Rivers, its President, General Manager, and the aforementioned members of its Board of Directors violated KRS 278.300(1) by failing to obtain Commission authorization prior to issuing the letter agreement assuming liability for Henderson's obligations for financial penalties related to the Station Two SO₂ scrubber project.

The Commission, on its own motion, HEREBY ORDERS that:

1. Big Rivers, its President, General Manager, and each aforementioned member of its Board of Directors shall appear at a hearing on December 7, 1993, at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to show cause why each should not individually be subject to the penalties prescribed in KRS 278.990 for the probable violation of KRS 278.300(1).

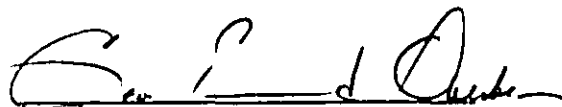
2. Big Rivers, its President, General Manager, and each
aforenamed member of the Board of Directors shall file within 20
days of the date of this Order individual or joint written
responses to the probable violation noted herein.

3. The record of evidence in Case No. 93-065 is incorporated
by reference in the record of this case.

4. Any request for an informal conference with the
Commission Staff shall be filed within 20 days from the date of
this Order.

Done at Frankfort, Kentucky, this 17th day of September, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director